See on this point: *N. & W. Ry. Co.* v. *Briggs*, 103 Va. 105, 10 Va. Law Reg. 607; *C. & O. Ry. Co.* v. *Heath*, 103 Va. 64, 10 Va. Law Reg. 529; *White* v. *Ry. Co.*, 99 Va. 357; *Ry. Co.* v. *Land Co.*, 27 Fla. 1; *Ireland* v. *Ry. Co.*, 79 Mich. 163.

RAILROADS—FIRES — NEGLIGENCE — COMPLAINT — ISSUES — PROOF — INSTRUCTIONS.—Where, in an action against a railroad company for a fire alleged to have been negligently set out, the complaint stated that there was a large accumulation of combustible matter on defendant's right of way where the fire was set, and that, for a long time prior to the fire, defendant had negligently suffered such matter so to remain during the hot season, until it was ignited by sparks from a passing locomotive, which fire, through defendant's negligence, escaped and communicated to plaintiff's property, such allegation was sufficiently certain and definite, both as to the extent of the accumulation of combustible matter, etc., and also as to the time during which it had been permitted to remain on the right of way.

Under an allegation that defendant railroad company negligently permitted fire to escape from its right of way on plaintiff's premises, it was not necessary for plaintiff to show that defendant omitted to adopt prudent means to prevent the escape of fire after it had started, but it was sufficient, under such averment, to show the accumulation of combustible material on the right of way, extending up to plaintiff's property, so that the communication of fire to plaintiff's property would be the natural and probable consequence of its burning on the right of way. *Ry. Co.* v. *Wise* (Ind.), 74 N. E. 1107.

See on this point: *Kimball* v. *Bowen*, 97 Va. 477; *Tutwiler* v. *C. & O.* 95 Va. 443; *Ry. Co.* v. *Thomas*, 92 Va. 606; *Tyler* v. *Rickamore*, 87 Va. 466; *N. & W. Ry. Co.* v. *Bohannon*, 85 Va. 293; *R. & D.* v. *Medley*, 75 Va. 499; *Brighthope v. Ry. Co.*, 76 Va. 449; *Shields v. N. & C. Ry.*, 129 N. C. 1; *Black* v. *Ry. Co.*, 115 N. C. 667; *Aycock* v. *Ry. Co.*, 89 N. C. 321; *Traxler* v. *Ry. Co.*, 74 N. C. 377; *Maraude* v. *Tex.*, 184 U. S. 173; *Albrons* v. *Seattle* (Wash.). 68 P. 78; *St. Louis* v. *Leedlum* (Kans.), 66 P. 1045; *Graw* v. *Ry. Co.*, 1 N. Dak. 252; *Jones* v. *Ry. Co.*, 59 Mich. 437; *Indiana* v. *Overman*, 110 Ind. 538; *A. C. L. Ry. Co.* v. *Watkins* (Va.) 51 S. E. 172

ASSAULT WITH INTENT TO KILL—INDICTMENT—INSTRUCTIONS.—In the trial of an indictment found under W. Va. Code 1899, ch. 144, sec. 9 (substantially the same as Va. Code 1904, sec. 3671), for malicious wounding with intent to maim, disfigure, disable or kill, an instruction at the instance of the state which eliminates from the consideration of the jury the intent with which the alleged wounding was done is erroneous. *State* v. *David* (W. Va.) 51, S E. 230.

GAMING—EVIDENCE.—In the case of *Davis* v. *State* (Ga.), 51 S. E. 501, the court *held*:

Evidence that the accused, with 10 or 12 others, was seen at night sitting around a box in a house; that some of these persons were engaged in playing cards; that the accused had cards in his hands; that when discovered they all ran; and that afterwards money was found on the box—was sufficient to authorize the conviction of the accused for gaming See also *Harmon* v. *State*, 47 S. E. 547, 120 Ga. 197; *Frost* v. *State*, 47 S. E. 901, 120 Ga. 311.

INJURY TO EMPLOYÉS—DANGEROUS WORK—REASONABLY SAFE PREMISES—INSPECTION—QUESTION FOR JURY.—Defendants, while reconstructing five elevator bins, employed 130 men for that purpose, and sought to accomplish the scheme by building inside concrete walls, which were to be raised to a height of 108 feet, 3 feet thereof being built at a time. This work required a scaffolding to be erected in accordance with plans furnished, to be put together by the men from material provided by the employer, which was to be lifted at intervals by means of tackle, pulleys, and ropes from above. This platform rested upon supports, and continued to remain the same structure but for the temporary lifting from time to time. Upon this platform a heavy box rested, containing concrete, and sustained a number of men who stood thereon, which tended to increase the strain upon it. When the platform had reached, through the progress of the work, a height of over 70 feet, in making a necessary change and lifting the same, one of the supports called "ledger boards" broke from defects therein, precipitating a number of the employés to the ground, who were instantly killed. *Held*, under the evidence, that the duty of the master in this case should have been necessarily controlled by the hazardous character of the work, which could not well be known or appreciated by the ordinary workmen engaged, and that the master's duty to furnish a reasonably safe place for his servants to perform their duties could not be avoided by allowing or authorizing any co-employés to select the material of which the scaffolding was to be constructed without making him a representative of the master, and hence that either by his appointment, or by inspection from time to time, or some other means to secure a reasonably safe place for the laborers to perform their work, the master was required to fulfill his obligation to his servants, and whether he did so in this case was a question of fact to be submitted to the jury. *Carlson* v. *Haglin* (Minn.), 104 N. W. 297.

For cases in point, see vol. 34, Cent. Dig. Master and Servant, sec. 175; *Richmond Locomotive Works* v. *Ford*, 94 Va. 627; *N. & W. Ry. Co.* v. *Cromer*, 99 Va. 763, 40 S. E. 54; *Richmond Granite Co.* v. *Bailey*, 92 Va. 554, 24 S. E. 232; *Va. Wheel Co.* v. *Chalkley*, 98 Va. 62, 5 Va. Law Reg. 763.

MASTER AND SERVANT—INJURY TO SERVANT—WARNING AND INSTRUCTING SERVANT.—It is the duty of an employer, knowing that the employment is dangerous, and that the employé is inexperienced, to warn and instruct